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CHARLES ELMORE GROPLEY
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Supreme Court of the United States

OCTOBER TERM, 1944.

No. 632.

GRACE LINE INC.,

Petitioner,

against

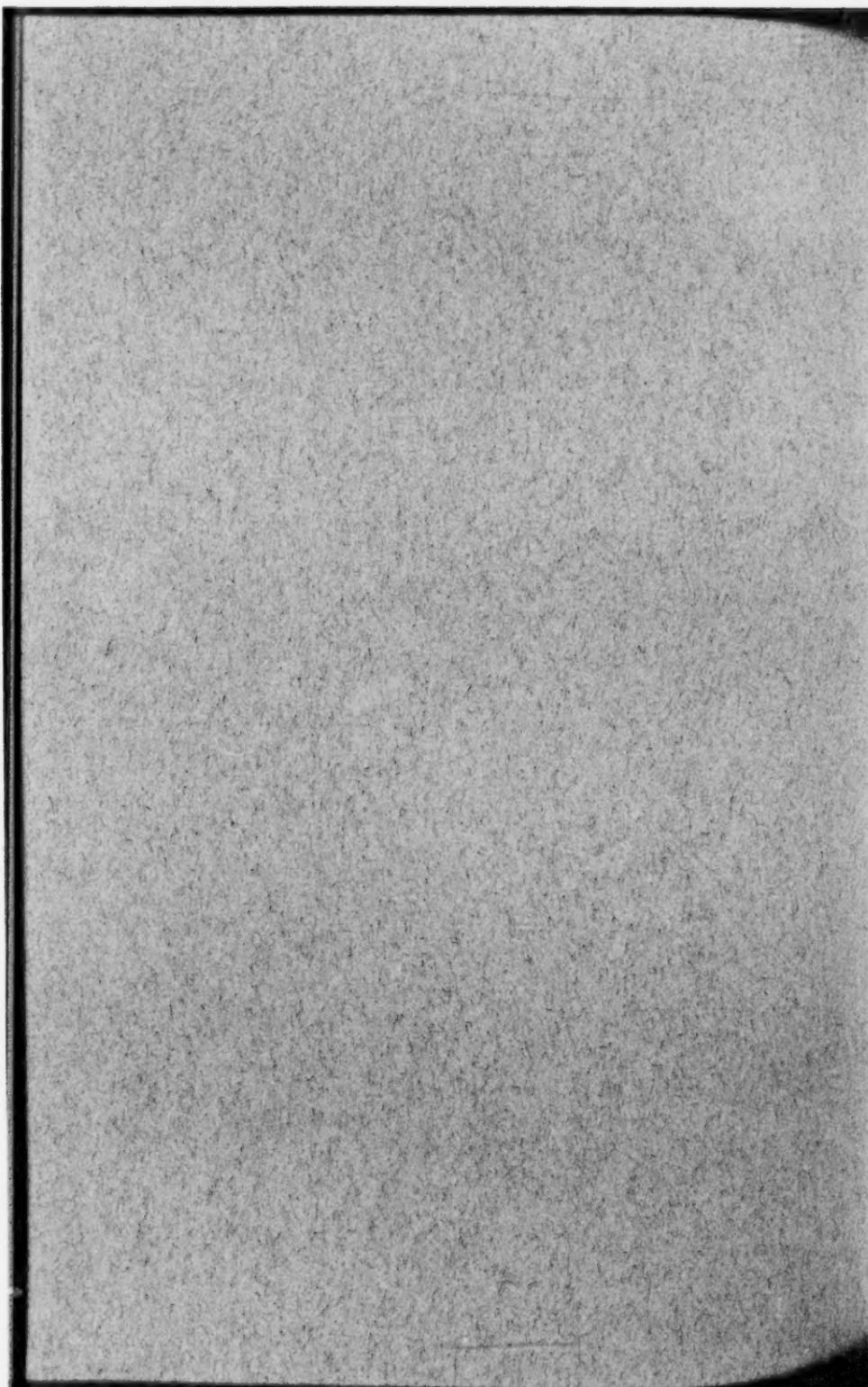
CUBA DISTILLING COMPANY, INC., and DEFENSE
SUPPLIES CORPORATION,

Respondents.

REPLY BRIEF FOR PETITIONER.

ROBERT S. ERSKINE,
Counsel for Petitioner.

EUGENE F. GILLIGAN,
Of Counsel.



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The matter involved as represented by respondents' answering brief is unrecognizable upon comparison with that actually presented by the Circuit Court's opinion. One would suppose from a reading of the answering brief that the matter involved fact determinations. Quite the contrary, the Circuit Court opinion clearly projects only law questions for review, as set forth in the petition. A short review of respondents' brief is necessary to correct the serious misconceptions set forth.

The respondents state that the Circuit Court did not find that the *Lara* acted *in extremis*. That statement is contradicted by the plain language of the Circuit Court's opinion.

The Circuit Court considered the " * measure of lenity we should accord the '*Lara*,' faced with the sudden apparition of the '*Cassimir*,' * * " (R. 320) and concluded that "The situation falls within what we said in *A. H. Bull SS. Company v. United States*, 34 Fed. (2) 614, 616; 'Even in

extremis * * * some discretion is demanded; * * *, R. 321.

That language also plainly exposes the incorrectness of respondents' statement that petitioner *assumed* that *Lara* acted *in extremis* "in its effort to present to this Court a question of law."

Respondents also make the unsupportable statement that the District Court "finding" that "the errors of the *Lara* were not errors *in extremis*" was not disturbed by the Circuit Court. This District Court law conclusion (R. 301; Conclusion of Law XI) was overruled by the Circuit Court by its holding that the situation was an *in extremis* situation. R. 321.

The petitioner's basis of appeal in the Circuit Court was that, on the facts found, the lower court erred in not concluding that the situation was governed by the law of *in extremis*. The Circuit Court upheld that contention, but misinterpreted the principle of error *in extremis* in a fashion that entirely destroys its meaning. This error of law alone is the basis of the petition here, together with the reasons set forth in the petition and supporting brief.

Respondents also refer, irrelevantly, to District Court conclusions that *Lara* was guilty of other faults following upon her rudder maneuver. The District Court had held that these alleged faults were not errors *in extremis*. But the Circuit Court's short opinion shows that the Circuit Court regarded *Lara*'s rudder maneuver as her major contribution to the collision and an act *in extremis*. Other subsequent acts or omissions, even if errors, likewise could only have been *in extremis*. It follows that only questions of law are presented because the Circuit Court applied the

principle of *error in extremis* in a way in conflict with the decisions of this Court and other Circuit Courts.

The respondents also state that both Courts "found that a proper lookout was not maintained on the *Lara*." There is absolutely nothing in the decision of either Court remotely suggesting that the *Lara* was brought to her situation of *extremis*, confronted by the *Cassimir*, through improper lookout on *Lara's* part. (See R. 287-8, fols. 861-3; R. 294-6, Findings 6, 11, 14; R. 320-1.) The respondents' reference to the Circuit Court's opinion (R. 321) does not support their assertion.

The Circuit Court, weighing *Lara's* judgment *in extremis*, charged her only with the fact of *Cassimir's* actual heading which the *Lara's* lookout saw and which the Circuit Court considered it was fair to suppose "that the officer in charge did not see." R. 321. *Lara's* evidence showed, and she has never disputed, that when she acted the *Cassimir* was heading across her bow, as found. There is no question of proper lookout. The opinion presents no questions except those raised by the Circuit Court's error in law in passing on the wisdom of the judgment exercised by a vessel *in extremis*.

Finally, bearing on the conflict of decisions set forth in petitioner's brief, the respondents admit that the decisions cited by the petitioner relating to faults committed *in extremis* are uniform. (Respondents' Brief, p. 2, last paragraph.) They do not dispute petitioner's contention that the cited decisions are in conflict with the decision in the instant case and with the decision of the same Court on which the Circuit Court bases its holding in the instant case.

Respondents do not contend that there was any error in the Circuit Court's decision that the *Lara* acted *in*

extremis and they do not dispute either that the Circuit Court's decision is in conflict with decisions of this Court and of other Circuit Courts or that the question involved is one of importance in maritime law.

Therefore, it is submitted that the respondents have not offered any objection in law or any valid challenge to the granting of the petition and that certiorari should be granted to review the Circuit Court's decree.

Respectfully submitted,

ROBERT S. ERSKINE,
Counsel for Petitioner.

EUGENE F. GILLIGAN,
Of Counsel.

New York, N. Y.
November 6, 1944.

